No. 93-1311

(5)

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

ROBERT GEORGE BURCHILL,

Petitioner,

v.

DOUGLAS KISH, SCOTT R. REHRIG, MICHAEL HARBOVE, DONALD K. MACCONNELL, ARTHUR SPITKO, THOMAS TOTH, SOUTHWHITEHALL POLICE DEPARTMENT, SOUTHWHITEHALL TOWNSHIP, KELLY WALDRON, ROBERT L. STEINBERG, LEHIGH COUNTY DISTRICT ATTY'S OFFICE, LEHIGH COUNTY, ALLENTOWN HOSPITAL/HEALTHEAST, DR. PAUL GROSS, CLYDE R. BOWER, JOHN DOE AND RICHARD DOE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT, PAUL K. GROSS, M.D., IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the United States Court of Appeals for the Third Circuit correctly affirm the Order of the United States District Court for the Eastern District of Pennsylvania which properly dismissed petitioner's Complaint with prejudice due to petitioner's flagrant and perpetual failure to comply with numerous court Orders?

LIST OF THE PARTIES

The parties set forth in the caption are the only parties to this action.

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BRIEF FOR RESPONDENT, PAUL K. GROSS, M.D., IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The decision and Opinion of the United States Court of Appeals for the Third Circuit is reported at *Burchill v. Kish*, No. 93-1438, 1993 U.S. App. LEXIS 32794 (3d Cir. Nov. 12, 1993) and is included in the Appendix to the Petition for Writ of Certiorari. The Order and Opinion of the United States District Court for the Eastern District of Pennsylvania has not been reported.

JURISDICTION

The statement of the grounds upon which the jurisdiction of this Court is sought is correctly presented in the Petition for Writ of Certiorari.

STATUTES

A listing of the statutes upon which petitioner's Writ of Certiorari relies is presented in the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

This appeal stems from an action brought by petitioner, Robert George Burchill (hereinafter "petitioner" or "Mr. Burchill"), against the respondents, including respondent herein, Paul K. Gross, M.D. (hereinafter "respondent" or "Dr. Gross"), in the United States District Court for the Eastern District of Pennsylvania. Petitioner initiated his action, in the form of a *pro se* Complaint, wherein he alleges violations of his constitutional rights pursuant to 42 U.S.C.S. §1983 with additional references to 42 U.S.C.S. §1981, §1982, §1985 and §1988.

Petitioner's underlying action alleges a deprivation of his constitutional rights and includes numerous factual averments against a multitude of parties. The Complaint appears to claim causes of action which took place on May 13, 1990 and May 14, 1990. Petitioner avers that he was lawfully in his home when several police officers, who are co-respondents in this action, entered his residence at gunpoint. Mr. Burchill claims that the police officers illegally searched his home, hand-cuffed and shackled him, caused his personal injury and failed to apprise him of his legal rights during the search. The Complaint further alleges that the police officers were in contact with officials of the Southwhitehall Police Department and Lehigh County District Attorney's Office during the search. It is asserted that various items of petitioner's personal property were

illegally confiscated. Moreover, the Complaint alleges that one of the Lehigh County Assistant District Attorneys instructed or advised one of the police officers to have petitioner committed to a hospital for mental health treatment.

Significantly, there are no specific averments against Dr. Gross contained in the Complaint. There are only two mentions of Dr. Gross in the pleading. The first appears in Paragraph 15, where Mr. Burchill avers "that after Plaintiff was illegally committed to Defendant Allentown Hospital/Healtheast, he briefly saw Defendant Dr. Gross only on one occasion at approximately 7:30 A.M. on 5/14/90." The only other mention of Dr. Gross is contained in Paragraph 24(d), which is not actually an averment against Dr. Gross, but rather appears to be an averment against counsel who was appointed to represent petitioner and who allegedly misrepresented a planned evaluation by Dr. Gross.

By the very nature of petitioner's Complaint, it is clear that Dr. Gross saw Mr. Burchill on a single occasion; the Complaint contains absolutely no allegations as to any improper conduct by Dr. Gross at that time nor any other activity by Dr. Gross which operated to deprive petitioner of his constitutional rights. Accordingly, it is clear that Mr. Burchill failed to state any cause of action for which relief may be granted against Dr. Gross.

On September 30, 1992, co-respondent, Allentown Hospital/Healtheast, Inc. (hereinafter "Allentown Hospital"), filed a Motion to Dismiss petitioner's Complaint. On October 5, 1992, Dr. Gross also filed a Motion to Dismiss the petitioner's Complaint along with a Brief in support of that Motion.

Thereafter, on October 6, 1992, the Honorable Franklin S. Van Antwerpen executed an Order directing that Mr. Burchill comply with Local Civil Rule 20 of the Eastern District Court and file a response to the Motions filed by Allentown Hospital and Dr. Gross. Judge Van Antwerpen specifically ordered that if petitioner did not

file a response within twenty-one days, the case would be dismissed with prejudice. Accordingly, Mr. Burchill had to file his response no later than October 26, 1992.

Despite the court's October 6, 1992 Order, petitioner did not file a Motion nor any other document requesting an additional extension of time for purposes of responding to the Motions to Dismiss. Then, on or about November 1, 1992, petitioner mailed an Answer to the Motion to Dismiss of Dr. Gross. The mailing was untimely as it failed to comply with the deadlines established by Judge Van Antwerpen pursuant to the October 6, 1992 court Order. As a result, Dr. Gross filed a Motion to Strike petitioner's Answer to the Motion to Dismiss.

Around the same time, co-respondents, Kelly Waldron, Robert L. Steinberg, Lehigh County District Attorney's Office and Lehigh County, filed Motions to Dismiss and for Summary Judgment against petitioner. Mr. Burchill then filed a Motion to Enlarge Response Time and, on November 10, 1992, the District Court granted petitioner's request. Despite the court's Order, on or about December 3, 1993, petitioner filed untimely responses to the Motions.

On December 9, 1992, Judge Van Antwerpen executed an Order directing petitioner to comply with Local Civil Rule 20 of the District Court and to file proper responses to all of the Motions to Dismiss. The Order explained that such information was necessary to aid the court "in understanding the legal basis of plaintiff's claim." The Order stated that "PLAINTIFF IS HEREBY NOTIFIED THAT IF A PROPER RESPONSE IS NOT FILED WITHIN TWENTY-ONE (21) DAYS OF THE DATE OF THIS ORDER, THIS CASE WILL BE DISMISSED BY THE COURT WITH PREJUDICE."

Thereafter, on January 6, 1993, Judge Van Antwerpen entered a similar Order directing petitioner to "file a proper response" to a Motion to Dismiss filed by co-respondents, Douglas Kisk, Scott R. Rehrig, Michael Harbove, Donald K. MacConnell, Arthur Spitko, Thomas Toth, Southwhitehall Police Department and

Southwhitehall Township. In response, petitioner filed another Motion to Enlarge Response Time and, on January 15, 1993, Judge Van Antwerpen extended the time for petitioner's response until February 5, 1993. That Order also stated that "NO FURTHER EXTENSIONS WILL BE PERMITTED." Despite the final deadline being established by the court, petitioner failed to file a response until February 11, 1993.

On February 22, 1993, the District Court wrote a seven page Order granting various Motions of respondents "without prejudice to [appellant's] right to plead over within twenty-one (21) days of the date of this Order." The Order stated that the court would "expect and direct that plaintiff shall and will drop all causes of action which are improper or which lack merit, and file a timely new proper pleading asserting any remaining causes of action within twenty-one (21) days of the date of this Order." Moreover, after reviewing various aspects of civil rights case law, the District Court issued a warning to petitioner and indicated that it would "impose substantial monetary or other sanctions for any causes of action in any Amended Complaint which are brought in bad faith."

On March 9, 1993, Judge Van Antwerpen, upon consideration of Mr. Burchill's Motion to Enlarge Response Time, directed that petitioner's Amended Complaint be filed "within twenty-one (21) days of the date of this Order or this case will be dismissed with prejudice." The court also wrote that no further extensions would be permitted. However, petitioner, in total disregard of that Order, failed to file a timely Amended Complaint and instead waited until April 8, 1993, well beyond the deadline, to comply with the District Court's directive.

Consequently, on April 5, 1993, Judge Van Antwerpen dismissed petitioner's case with prejudice as to all respondents, including Dr. Gross. That Order was entered on April 6, 1993. Subsequently, on April 21, 1993, Mr. Burchill filed a Motion to Obtain Relief from Judgment and, approximately two weeks later, on May 5,

1993, filed a Notice of Appeal to the United States District Court for the Eastern District of Pennsylvania from the Order dated April 5, 1993. Accordingly, on May 18, 1993, the District Court entered an Order which administratively dismissed petitioner's Motion to Obtain Relief since the Court was "without jurisdiction to enter it at this time." The appeal which was taken by Mr. Burchill to the United States Court of Appeals for the Third Circuit concerned only the District Court's April 4, 1993 Order dismissing petitioner's Complaint with prejudice.

Upon review, the United States Court of Appeals for the Third Circuit entered a Judgment Order, dated November 12, 1993, which directed that the Judgment of the District Court, which had been entered on April 6, 1993, be affirmed. Petitioner has now filed a Writ of Certiorari with this Court from the Third Circuit's decision.

SUMMARY OF THE ARGUMENT

The Petition for Writ of Certiorari should be denied. The U.S. Court of Appeals for the Third Circuit followed the Federal Rules of Civil Procedure in dismissing petitioner's claim. Specifically, a dismissal under Fed.R. Civ.P. 41(b) for failure of a plaintiff to comply with an order of the court, whether on a defendant's motion or the court's own, is a matter resting "firmly within the discretion of the District Court judge." *Mindek v. Rigatti*, 964 F.2d 1369, 1372 (3d Cir. 1992). Moreover, a motion to dismiss, pursuant to Fed.R.Civ.P. 41(b), will be reversed on appeal only when there is a manifest abuse of discretion demonstrated by the complaining party. *Id.*, 964 F.2d at 1373, 1374; *see Guyer v. Beard*, 907 F.2d 1424 (3d Cir. 1990); *see also Thompson v. Housing Authority of the City of Los Angeles*, 782 F.2d 829 (9th Cir. 1986), *cert. denied*, 107 S.Ct. 112 (1986).

Instantly, there was no abuse of discretion committed by either the Eastern District Court or the Third Circuit. As has been set forth in the Statement of the Case in this Brief, from the outset of this litigation, petitioner failed to comply with a litany of court Orders, including the February 22, 1993 Order which directed that petitioner must file an Amended Complaint within twenty-one days or else have his case dismissed with prejudice. Since the petitioner did not comply with any of the court Orders, his case was properly dismissed. It simply may not be said that the lower courts made a "snap judgment" nor may it be said that the Eastern District Court or the Third Circuit did not fully take into consideration the District Court's extended contact with the litigant.

Without question, a review of this matter reveals that the Third Circuit did not render a decision in conflict with any decision of any other United States Court of Appeals on the same matter nor did it depart from the accepted and usual course of judicial proceedings. *See Link v. Wabash Railroad Co.*, 82 S.Ct. 1386 (1962)(this Court holds that it was not an abuse of discretion for district court to have dismissed an action for failure to prosecute and affirms orders, pursuant to Fed.R.Civ.P. 41(b), of both the district court and the Seventh Circuit). Much to the contrary, the decision of the Third Circuit was in full accord with all legal authority and fully justifies denying petitioner's Writ of Certiorari.

ARGUMENT – REASONS FOR DENYING PETITION

The Third Circuit was correct in affirming the Order of the District Court which properly dismissed petitioner's Complaint with prejudice due to his flagrant and perpetual failure to comply with numerous court Orders

Fed.R.Civ.P. 41, addressing dismissal of actions, states, in pertinent part,:

> For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Fed.R.Civ.P. 41(b).

Commentary addressing the above Rule clarifies that, under the precept, while a defendant may move for dismissal for want of prosecution, a district court may, in the exercise of its own inherent power to keep its dockets clear, dismiss a matter on its own motion for want of prosecution. 5 *Moore's Federal Practice* §41.11[2](1993)(footnotes omitted), *citing*, *Link v. Wabash Railroad Co.*, 82 S.Ct. 1386 (1962); *Hewlett v. Davis*, 844 F.2d 109 (3d Cir. 1988). An involuntary dismissal under Rule 41(b) amounts to an adjudication on the merits and is with prejudice to the bringing of a new action. Wright & Miller, 9 *Federal Practice and Procedure*: Civil §2369 (1971). It is apparent that allowing dismissal for failure to prosecute is "intended as a safeguard against delay in litigation and harassment of a defendant." *Id.* at §2370. Moreover, a decision based upon Rule 41(b) rests in the sole discretion of the district

court judge and is reviewable only for an abuse of discretion. *Hewlett*, 844 F.2d at 114.

Recently, the Third Circuit specifically addressed Rule 41(b) and affirmed the district court's dismissal of a plaintiffs' Complaint. In *Mindek v. Rigatti*, 964 F.2d 1369 (3d Cir. 1992), the court considered the case of two plaintiffs who, from the commencement of their lawsuit, flouted court orders and "denigrated the authority of the magistrate judge to whom their case was assigned." *Id.*, 964 F.2d at 1370. Specifically, the plaintiffs brought a lawsuit under 42 U.S.C.S. §1983 alleging that police officers used excessive force and performed an unconstitutional seizure of their tape recorder in conjunction with the enforcement of an allegedly unconstitutional anti-loitering ordinance. *Id.*, 964 F.2d at 1371. After plaintiffs failed to recognize the judge's authority by refusing to comply with court orders, the magistrate judge determined that dismissal was warranted pursuant to the Third Circuit's previous decision in *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863 (3d Cir. 1984).

On appeal in *Mindek*, the court affirmed the dismissal of plaintiffs' complaint with prejudice. In so doing, the court recognized that the decision to dismiss constitutes an exercise of the judge's discretion and "must be given great deference by this Court – a court which has had no direct contact with the litigants and whose orders, calendar, docket and authority have not been violated or disrupted." *Id.*, 964 F.2d at 1373. The Third Circuit stated:

> To tolerate the delays caused by the Mindeks, or to equivocate over lesser sanctions, would make a mockery of the very objectives of the 'civil justice expense and delay reduction plans' which the district courts have developed and implemented pursuant to the Civil Justice Reform Act of 1990. 28 U.S.C. 472 *et. seq.* (supp.

> 1991). Congress enacted the Civil Justice Reform Act of 1990 after having found that unnecessary costs and delays in the federal judicial system had seriously decreased access to the courts. . . . The district court plans . . . are designed to proscribe delay and to reduce expense by encouraging early judicial intervention and efficient judicial management of litigation.
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> * * *
>
> . . . [W]e in the Court of Appeals should not add to the burdens of the district courts by suffering the behavior of litigants who, like the Mindeks refused to abide by prescribed rules of court. The district courts cannot, and should not, tolerate unjustifiable delays and the expense of irreplaceable judicial resources caused by litigants, pro-se or represented, who will not obey court orders. Nor will we.

Mindek, 964 F.2d at 1374, 1375 (citations omitted).

As set forth above, in *Mindek*, the Third Circuit referred to its previous decision in *Poulis v. State Farm Fire & Casualty Company*, 747 F.2d 863 (3d Cir. 1984). In *Poulis*, after the plaintiffs failed to comply with court orders, the district court, *sua sponte*, dismissed the case with prejudice. *Id.*, 747 F.2d at 865. In affirming the judgment of the lower court, the Third Circuit provided factors, which were not meant to be mechanically applied, which may be used in determining whether a district court has abused its discretion in dismissing a case. As the *Mindek* court stated, "*Poulis* did not provide a magic formula whereby the decision to dismiss or not to dismiss a plaintiff's complaint becomes a mechanical calculation easily reviewed by this Court. . . . Instead, the decision must be made in the context of the district court's extended contact with the litigant." *Mindek*, 964 F.2d at 1373. Ultimately, in both cases, *Poulis* and *Mindek*, the Third Circuit determined that the district

court had not abused its discretion in dismissing plaintiffs' complaints due to the pattern of dilatory behavior and the refusal to comply with court orders.

Moreover, the Third Circuit, in *Mindek*, quoted from a decision of this Court, *National Hockey League v. Metropolitan Hockey Club, Inc.*, 96 S.Ct. 2778 (1975), in offering additional insight into the discretion given to a district court judge when making a decision on whether to dismiss an action. This Court, in reversing a decision of the Third Circuit after the Circuit had reversed a district court judge's dismissal of an unmanageable plaintiff's complaint, stated:

> the question, of course, is not whether this Court, or whether the Court of Appeals, would as an original matter have dismissed the action; it is whether the District Court abused its discretion in so doing.
>
> There is a natural tendency on the part of reviewing courts, properly employing the benefit of hindsight, to be heavily influenced by the severity of outright dismissal as a sanction for failure to comply with a discovery order. . . . But here, as in other areas of the law, the most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.

National Hockey League, 96 S.Ct. at 2780, 2781; *see also Costello v. United States*, 81 S.Ct. 534 (1961).

In conjunction with all of the foregoing legal authority, it is evident, in the instant case, that the District Court acted well within its discretionary authority in dismissing petitioner's Complaint with prejudice and that the Third Circuit was correct in affirming that ruling. From the outset of this litigation, Mr. Burchill

failed to comply with several court Orders, including the February 22, 1993 Order which directed that petitioner must file an Amended Complaint within twenty-one days or else have his case be dismissed with prejudice. Since Mr. Burchill did not comply with any of the court Orders, his case was properly dismissed. It simply may not be said that either court below committed a manifest abuse of discretion. Much to the contrary, the history of this case is marked by dilatory behavior exhibited by petitioner. Deadline after deadline was missed, even those deadlines which granted extensions of time.

Significantly, it must also be noted that the respondents have been caused to suffer harsh prejudice as a result of Mr. Burchill's conduct. Despite the fact that Mr. Burchill decided to institute this lawsuit, he then completely failed to prosecute his action. As a result, the respondents have been forced to spend much time and expense in filing motion after motion in order to deal with every action, and inaction, of Mr. Burchill.

This prejudice has been particularly burdensome to Dr. Gross because there are no direct averments against Dr. Gross contained in the Complaint. As Dr. Gross set forth in the Statement of the Case contained in this Brief, there are only two mentions of respondent in the pleading. In the first, at Paragraph 15 of the Complaint, Mr. Burchill avers "that after plaintiff was illegally committed to defendant Allentown Hospital/Healtheast, he briefly saw defendant Dr. Gross only on one occasion at approximately 7:30 A.M. on 5/14/90." The only other mention of Dr. Gross is contained in Paragraph 24(d), which is not actually an averment against Dr. Gross, but rather appears to be an averment against counsel who was appointed to represent Mr. Burchill and who allegedly misrepresented a planned evaluation by Dr. Gross.

As such, by the very language of the Complaint, it is clear that Dr. Gross saw Mr. Burchill on a single occasion; the Complaint contains absolutely no allegations as to any improper conduct by Dr. Gross on that

occasion, nor any other activity by Dr. Gross which operated to deprive petitioner of his constitutional rights.

Accordingly, Mr. Burchill failed to state any cause of action against Dr. Gross, and yet, respondent has had to suffer the consequences of being forced to participate in this litigation and to deal with the delay caused by Mr. Burchill. At some point, judicial intervention is necessary; Mr. Burchill's dilatory behavior is exactly the type of conduct which Federal Rule of Civil Procedure 41(b) seeks to prevent. Hence, it is patently evident that the ruling of the Third Circuit was wholly appropriate and well within the bounds of legal authority. Simply put, there was no abuse of discretion, and petitioner's Writ of Certiorari should be denied.

In addition, it is likewise important to address petitioner's claim regarding the alleged failure of the District Court to consider his Motion to Obtain Relief from Judgment. Specifically, once Mr. Burchill violated the court's Order regarding the timely need for him to file an Amended Complaint, the District Court dismissed his case by Order dated April 5, 1993 and entered April 6, 1993. Subsequently, on April 8, 1993, after the case was dismissed, petitioner filed an Amended Complaint and, on April 21, 1993, filed a Motion to Obtain Relief from Judgment. Shortly thereafter, on May 5, 1993, petitioner filed a Notice of Appeal.

With regard to the sequence of events which occurred in this litigation, it is first critical to note that, as the District Court recognized in its Order dated May 17, 1993, once Mr. Burchill filed an appeal, his Motion to Obtain Relief from Judgment had to be administratively dismissed since, at that point, the District Court had no jurisdiction to consider his request. Once petitioner filed a Notice of Appeal, jurisdiction was removed from the District Court. Therefore, Judge Van Antwerpen had no choice but to dismiss the Motion, and it must not be overlooked that the District Court made such an administrative dismissal "without prejudice".

Additionally, Fed.R.Civ.P. 60, addressing relief from a judgment or order, sets forth the bases of obtaining relief from a judgment or order. These include mistake, inadvertence, surprise or excusable neglect, newly discovered evidence, fraud, the judgment is void, the judgment has been satisfied or any other reason justifying relief from the operation of the judgment. It appears that Mr. Burchill requests that Rule 60 be applied in a way which would allow his Amended Complaint to be considered filed in a timely manner, despite its overt lateness.

As the docket entries in this matter reflect, it is undisputed that petitioner's Complaint was filed with the District Court on April 8, 1993, two days after the Order dismissing the case was entered. Moreover, regardless of when Mr. Burchill chooses to interpret the date of the March 9, 1993 Order, which directed that he file his Amended Complaint within twenty-one days, it is still clear that the Amended Complaint was filed beyond the deadline, even taking into account the three day period concerning notice by mail which is set forth in Fed.R.Civ.P. 6(e).

Correspondingly, in the Motion to Obtain Relief from Judgment, Mr. Burchill has offered no facts which would constitute "excusable neglect" for his late filing. Much to the contrary, the record illustrates that, throughout this litigation, Mr. Burchill acted in a dilatory manner. His behavior, as a whole, totally negates any allegation that petitioner's persistent neglect should be "excused".

Moreover, in his Petition, Mr. Burchill theorizes that, since the April 1993 Motion was filed within ten days of the questioned Order, the court could have treated it as a Fed.R.Civ.P. 59(e) motion. However, a mere review of the docket entries shows that petitioner's Motion for Relief from Judgment was filed with the District Court on April 21, 1993, fifteen days after the entry of the Order dismissing the case. Under

Fed.R.Civ.P. 59(e), a motion to alter or amend a judgment is required to be served within ten days after the entry of the judgment. The ten day time period under Fed.R.Civ.P. 59(e) is jurisdictional and cannot be extended in the discretion of the district court. *See EF Operating Corporation v. American Buildings*, 993 F.2d 1046 (3d Cir. 1993), *citing*, *De La Fuente v. Central Elec. Coop., Inc.*, 703 F.2d 63, 65 (3d Cir. 1983)(*per curiam*); *Welch v. Folsom*, 925 F.2d 666, 669 (3d Cir. 1991). Here, the judgment dismissing the case was entered on April 6, 1993, and Mr. Burchill's Motion for Relief from Judgment was not filed until April 21, 1993, well beyond the ten day deadline. Accordingly, Mr. Burchill's Motion does not fit within the ambit of a request to alter or to amend a judgment under Fed.R.Civ.P. 59(e). There simply was no proper basis for petitioner's request.

As a result of all the foregoing, it is apparent that the Third Circuit was correct in affirming the Order of the District Court. There was no abuse of discretion, and the ruling of the Third Circuit is in full accord with all legal authority, including both the Federal Rules of Procedure as well as all pertinent appellate case law. The decision of the Third Circuit has not created any conflicts nor does the decision depart from the accepted and usual course of judicial proceedings. Therefore, petitioner has completely failed to provide this Court with any justification or support for his present request.

CONCLUSION

For the reasons set forth above, respondent, Paul K. Gross, M.D., respectfully submits that the Petition for Writ of Certiorari should be DENIED.

Respectfully submitted,

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